IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-02-2005

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

AND

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

WRIT PETITION No.14940 OF 2003

1.P.C.Natarajan
2.P.Mari
3.P.Karmegam
4.V.Subramanian
5.Paluchamy
6.S.Muniandi ... Petitioners

-vs-

1.The District Collector,
Collectorate,
Ramanathapuram.

2.The Executive Engineer,
Tamil Nadu Water Supplies &
Drainage Board,
Conversion of Hard Water into
Soft Water Division,
R.S.Road, I.O.B. Upstairs,
Ramanathapuram-623 501.

3.The Chairman,
Tamil Nadu Pollution Control Board,
No.100, Mount Road,
Guindy, Chennai-32. ... Respondents

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For petitioners : Mrs.Vijayakumari Natarajan

For respondent 1 : Mr.S.P.Prabhakaran,
Addl.Govt.Pleader.

For respondent 2 : Mrs.Sudarsana Sundar

For respondent 3 : Mrs.Rita Chandrasekaran

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari.

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O R D E R

M.KARPAGAVINAYAGAM,J.

This Writ Petition, which is a pro bono publico, has been filed by the petitioners on behalf of three village panchayats, seeking for quashing of the order of the District Collector, Ramanathapuram, first respondent herein, dated 10.04.2003, permitting the other respondents for the scheme of installation of pump wells in three villages for drawing water and to give water supply for drinking purpose to Mandapam Town Panchayat.

2. According to the petitioners, the officials, namely, the Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Ramanathapuram, second respondent herein, attempted to put up sucking pump well in the area near to the villages, in order to get water to be brought to Mandapam Town Panchayat. The village people objected and agitated over the said action. They also made a representation and passed resolutions through Panchayats and sent the same to the first respondent District Collector. Despite the same, the work proceeded. Therefore, the petitioners filed W.P.No.4061 of 2003 for a mandamus, directing the respondents, to drop the scheme of sucking Pump Well. The I Bench of this Court, by an order dated 10.02.2003, disposed of the said petition, directing the District Collector, Ramanathapuram, first respondent herein, to consider the representation made by the petitioners on behalf of the villagers within the stipulated period and, till the disposal of the representation, status quo with regard to installation of pump wells was ordered to be maintained. In pursuance of the order dated 10.02.2003, the District Collector conducted an enquiry and ultimately passed the impugned order dated 10.04.2003, permitting such an installation of the pump wells for drawing water for distribution to Mandapam Town Panchayat. Hence, this Writ Petition, seeking for issuance of certiorari, challenging the impugned order, dated 10.04.2003.

3. The submissions made by the learned counsel for the petitioners are as follows :

There is no actual necessity to take water from these three villages, which are situated about 15 kms. away from Mandapam Town Panchayat, and to supply water to Mandapam Town. The scheme of installation of pump wells involves risk of several village people being deprived of basic necessity of water. Originally, these villagers were prevented under the guidelines from putting up wells and also from using sucking pumps. The scheme now proposed by the Government to take water from these wells would be contrary to the guidelines and the provisions of the relevant Act, namely, Environmental Protection Act. The sucking of pump wells by officials in their villages with a depth of 20 feet will not only make the wells and the ground water dry, but also lead to the streams and the wells being polluted by salty sea water. There is no law, which contemplates for providing water to the town, at the risk of taking away the water right of the villagers. Denying the right to water, a right which the villagers are entitled to, is violative of Article 21 of the Constitution of India. The District Collector failed to independently deal with the matter and it is merely carried away by the statement of the officials, who have evolved the scheme. As per the

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order of the District Collector, the whole area up to a depth of 30 feet is filled with sand. Then, it is not practically possible to implement the suggestion of putting up a wall below the sand level. When the petitioners complained that there is a danger of sea water through underground stream polluting the wells of the villagers, the answer given by the District Collector in his impugned order that the wall erected below the sand level would prevent the ground water in the sand area from entering into sea would reveal that the District Collector has not at all understood the actual grievance of the petitioners. The action taken by the respondent is against the guidelines given in the judgments of the Supreme Court, reported in 1997 (11) SCC 312 (M.C.Mehta vs. Union of India and others); AIR 1999 SUPREME COURT 812 (A.P.Pollution Control Board vs. Prof.M.V.Nayudu) and 2001 (2) SCC 62 (A.P.Pollution Control Board II vs. Prof.M.V.Nayudu).

4. Refuting the above submissions, counter affidavits have been filed by both the first respondent/District Collector and the second respondent/Executive Engineer, Tamil Nadu Water Supplies and Drainage Board.

5. The gist of the counter affidavits, filed by the said respondents, is as follows :

Water Supply Improvement Scheme for Mandapam Town Panchayat was formulated during the year 2000 for the population of 24,500. Since sufficient water sources are not available in and around Town Panchayat area and nearby villages, after a careful study by the Geological Wing, the sand-dune area, near NH 49, about 13 kms. away from Mandapam towards Ramnad, has been chosen. As per the High Court's direction, dated 10.02.2003, the District Collector conducted a thorough enquiry, by making spot inspection and getting statements of the persons concerned and also inspections of the experts, and disposed of the representation made by the villagers on 10.04.2004, in pursuance of the order of the High Court in W.P.No.4061 of 2003, permitting the TWAD Board to dig wells, subject to the following four conditions viz., (i) TWAD Board has been permitted to construct 4 Nos. of infiltration wells instead of 7 Nos. originally proposed withdrawal of 7,20,000 litres of water per day with a reduction of 5,00,000 litres a day from the original requirement; (ii) the per capita water supply per day of Mandapam Town Panchayat should be reduced to 40 litres from the originally proposed 65 litres; (iii) an underground dyke should be constructed to stop the seepage of ground water into sea from sandy area and (iv) a check dam should be constructed to stop the excess rain water to flow into sea during rainy season, so as to improve the water potential of nearby wells. Based on the above order, the construction work started on 29.04.2003.

6. In the meantime, this Writ Petition was filed by the petitioners before this Court. By an affidavit, dated 19.12.2003, the I Bench was informed, that the works pertaining to the scheme were almost completed and permission was sought to complete the work and an undertaking was also given not to draw water from the wells until further orders of this Court. Accordingly, this Court, by an order dated 24.12.2003, on entertaining the affidavit of undertaking, allowed the respondents to complete the work, if anything remains to be laid, at

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the risk of the Government and directed the respondents not to draw water from the pipelines laid, pending disposal of the Writ Petition. Accordingly, the entire work has been completed.

7. Prior to the passing of the impugned order, as directed by the I Bench of this Court, the first respondent directed the TWAD Board to drill borewells and take test results. Accordingly, TWAD Board drilled several borewells up to 30 feet depth in the proposed well sites and water from each borewell at different depth was tested in TWAD Board Laboratory and the test results showed that water available at the depth of 30 ft. was potable and good for drinking purpose. The Assistant Hydrogeologist, the Deputy Hydrogeologist and the Hydrogeologist of TWAD Board investigated the area and gave the same report. The authorities of State Ground Water Division, Karaikudi, also visited the site on 19.03.2003 and gave opinion with the same results. The villagers and officials were called for meetings on several occasions and they were informed about the developments and also explained the details given by the TWAD Board as well as the authorities of the State Ground Water Division. Hence, after studying in depth, the Geological Wing has selected the present sand-dune area of Nochiyoorani village, which is 13 kms. away from Mandapam, for digging of wells. Further, after the order dated 10.04.2003 by the District Collector, the Hydrogeological Wing of TWAD Board, which has enough technical knowledge, selected sites for check dam and underground dyke. Now, the above work has been completed by the TWAD Board. Due to this, water in the nearby wells of the villagers and the sites of the proposed wells will be augmented. Thus, the wells of the villagers will be protected from becoming dry. Therefore, the apprehension expressed by the villagers through the Public Interest Litigation is not bona fide. They were called on several occasions by the District Collector and explained the factual situation and also preventive measures have been taken to avoid the contingencies. Therefore, there is no merit in this Writ Petition and the same is liable to be dismissed.

8. On the above lines, elaborate and strenuous arguments are made by the learned counsel for the petitioners and the respondents.

9. Learned counsel for the petitioners, in support of her submissions as referred to above, would place reliance on the report of the third respondent, namely, Tamil Nadu Pollution Control Board, to the effect that the petitioners' apprehension of depletion of good quality water and intrusion of sea water is reasonable.

10. In regard to the above submission, an additional counter has been filed by the first respondent/District Collector, stating that the Pollution Control Board is not the authority to deal with ground water and, as such, they are not competent to file such a report and the competent authority, namely, Executive Engineer, State Ground Water Division, Karaikudi, conducted an inspection on 19.03.2003 and the report of the State Ground Water Division, Karaikudi, has also been received to the effect that the said apprehension is unreasonable, as necessary preventive measures are being taken through check dams and protected walls being erected in that area.

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11. We have heard the learned counsel for the parties; carefully considered their submissions and perused the records.

12. At the outset, it shall be stated, the citations referred to above by the learned counsel for the petitioners, reported in 1997 (11) SCC 312 (M.C.Mehta vs. Union of India and others); AIR 1999 SUPREME COURT 812 (A.P.Pollution Control Board vs. Prof.M.V.Nayudu) and 2001 (2) SCC 62 (A.P.Pollution Control Board II vs. Prof.M.V.Nayudu), would only relate to the general guidelines, with regard to environmental protection, formulated by the Apex Court on various occasions. Those guidelines, no doubt, are the principles, to be taken note of by the Government, for regulation and control of ground water management and other related issues. Those principles are not disputed.

13. But, the main thrust of the arguments advanced by the learned counsel for the petitioners is, that there is no reason for the first respondent/District Collector to choose their villages to supply drinking water to the people of Mandapam Town Panchayat, which is situated 15 kms. away, and if water is taken from their wells, the wells will become dry and there is a possibility of seepage of sea water.

14. We are unable to accept the said contention, especially when a specific report was obtained from the Geological Wing by the District Collector. Since sufficient water sources are not available in and around Town Panchayat area and nearby villages, after a careful study by the Geological Wing, the sand-dune area, near NH 49, about 13 kms. away from Mandapam towards Ramnad, has been chosen. Further, the proper authority, namely, State Ground Water Division, Karaikudi, visited the site on 19.03.2003 and gave a report that water available even at the depth of 30 feet is potable and good for drinking purpose and, as such, the apprehension of the villagers that digging wells beyond 10 feet depth will lead to salinity is baseless. Further, the TWAD Board has proposed to dig only infiltration wells and not sucking pump wells. Water filtered and stored in the wells only will be pumped and there is no provision for any sucking. Hence, there is absolutely no chance for ground water becoming salty or sea water getting intruded. The proposed wells are located 2 kms. away from sea. According to the authority of State Ground Water Division, there is no chance for intrusion of sea water in the wells of the villagers, since the area is sandy and it has the capacity to store water in itself during rainy season. We are also unable to find any reason to reject this report.

15. When it has been thoroughly enquired into and proper reasons have been given by the District Collector on the basis of the reports of the Geological experts, TWAD Board and the State Ground Water Division, on the basis of the spot inspection, investigation and survey, no proper ground has been made out by the petitioners before this Court to hold that the impugned order would suffer from any infirmity.

16. In this context, it is relevant to extract the observation made by the Supreme Court, in the case of Balco Employees' Union vs. Union of India and others, reported in 2002 (2) SCC 333, which reads as follows :

> "98. .... the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at

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a conclusion unless the Court is satisfied that there is illegality in the decision itself."

17. In the light of the above observation of the Supreme Court, we cannot straight-a-way hold that the reports of the experts are wrong. Further, according to the District Collector, an underground dyke is also constructed at the upstream side of Pillamadam River and the water movement from the villagers' wells towards the down stream will be restricted by the check dam and the dyke provided in the underground area. As such, the villagers' wells will be protected from becoming dry. Originally, out of the proposed drawal of 12,25,000 litres of water per day, the Collector, in his impugned order, after enquiry, has permitted to draw only 7,20,000 litres of water per day.

18. Thus, the perusal of the Collector's detailed order clearly indicates that a thorough enquiry was conducted by the District Collector not only with TWAD Board Officials, Agricultural Department, Revenue Divisional Officer, Assistant Director of Town Panchayat and State Ground Water Division Officials, Karaikudi, but also with the village representatives, lawyers etc. and after considering the Field Inspection Reports of the officials, the order impugned has been passed. Hence, the order, passed on the basis of the factual details given by the appropriate officials to the District Collector, cannot be said to be invalid, that too in the light of the detailed reasonings given by the District Collector.

19. Writ Petition is, therefore, dismissed. No costs. Consequently, the connected W.P.M.P.Nos.18710 and 35055 of 2003 and 21128 of 2004 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The District Collector,
Collectorate,
Ramanathapuram.

2.The Executive Engineer,
Tamil Nadu Water Supplies &
Drainage Board,
Conversion of Hard Water into
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3.The Chairman,
Tamil Nadu Pollution Control Board,
No.100, Mount Road,
Guindy, Chennai-32.

One cc to Mr.Sudarshana Sundar, Advocate SR.7455

one cc to Mr.S.Natarajan, Advocate SR.7510.

One cc to Mr.Rita Chandrasekar, Advocate SR.7549

one cc to Govt. Pleader SR.7627.

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